

1 E. MARTIN ESTRADA
United States Attorney
2 MACK E. JENKINS
Assistant United States Attorney
3 Chief, Criminal Division
JENA A. MACCABE (Cal. Bar No. 316637)
4 Assistant United States Attorney
Violent and Organized Crime Section
5 1300 United States Courthouse
312 North Spring Street
6 Los Angeles, California 90012
Telephone: (213) 894-5046
7 Facsimile: (213) 894-0141
E-mail: jena.maccabe@usdoj.gov

8 Attorneys for Plaintiff
9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 DAEKUN CHO,
aka "DK,"

16 Defendant.

No. CR 23-00149-FMO

STIPULATION AND JOINT REQUEST FOR
A PROTECTIVE ORDER REGARDING
DISCOVERY CONTAINING PERSONAL
IDENTIFYING INFORMATION, MEDICAL
INFORMATION, PRIVACY ACT
INFORMATION, AND COOPERATING
WITNESS INFORMATION

PROPOSED ORDER FILED SEPARATELY

19
20 Plaintiff, United States of America, by and through its counsel
21 of record, the United States Attorney for the Central District of
22 California and Assistant United States Attorney Jena A. MacCabe, and
23 defendant DAEKUN CHO, also known as "DK," ("defendant"), by and
24 through his counsel of record, defense attorney Anthony M. Solis
25 (collectively the "parties"), for the reasons set forth below,
26 request that the Court enter the proposed protective order (the
27 "Protective Order") governing the use and dissemination of
28 (1) personal identifying information ("PII") of real persons

1 pursuant to Federal Rule of Criminal Procedure Rule 16(d)(1), and
2 (2) medical or health information, and (3) material that may contain
3 information within the scope of the Privacy Act, and (4) information
4 related to confidential informant(s) and/or cooperating witness(es)
5 who may testify at trial.

6 Introduction and Grounds for Protective Order

7 1. Defendant is charged in this matter with violations of 18
8 U.S.C. § 1951(a): Interference and Attempted Interference with
9 Commerce by Extortion, and 18 U.S.C. §§ 2119(2), (2)(a): Carjacking.
10 Defendant is detained pending trial.

11 2. A protective order is necessary because the government
12 intends to produce to the defense materials regarding confidential
13 informants or cooperating witnesses who participated in the
14 government's investigation and who may testify at trial. Because
15 these materials could be used to identify the confidential
16 informants or cooperating witnesses, the government believes that
17 the unauthorized dissemination or distribution of the materials may
18 compromise the ability of such persons to participate effectively in
19 future investigations in an undercover capacity and/or may expose
20 him/her to potential safety risks.

21 3. A protective order is also necessary because the
22 government intends to produce to the defense materials containing
23 third parties' PII and medical information. The government believes
24 that disclosure of this information without limitation risks the
25 privacy and security of the information's legitimate owners. The
26 medical information at issue may also be subject to various federal
27 laws protecting the privacy of medical records, including provisions
28 of the Privacy Act, 5 U.S.C. § 552a; provisions of 45 C.F.R.

1 §§ 164.102-164.534; and/or provisions of 42 U.S.C. § 1306. Because
2 the government has an ongoing obligation to protect third parties'
3 PII and medical information, the government cannot produce to
4 defendant an unredacted set of discovery containing this information
5 without the Court entering the Protective Order. Moreover, PII and
6 medical information make up a significant part of the discovery in
7 this case and such information itself, in many instances, has
8 evidentiary value. If the government were to attempt to redact all
9 this information in strict compliance with Federal Rule of Criminal
10 Procedure 49.1, the Central District of California's Local Rules
11 regarding redaction, and the Privacy Policy of the United States
12 Judicial Conference, the defense would receive a set of discovery
13 that would be highly confusing and difficult to understand, and it
14 would be challenging for defense counsel to adequately evaluate the
15 case, provide advice to defendant, or prepare for trial.

16 4. An order is also necessary because the government intends
17 to produce to the defense materials that may contain information
18 within the scope of the Privacy Act, 5 U.S.C. § 552a ("Privacy Act
19 Information"). To the extent that these materials contain Privacy
20 Act Information, an order is necessary to authorize disclosure
21 pursuant to 5 U.S.C. § 552a(b)(11).

22 5. The purpose of the Protective Order is to (a) allow the
23 government to comply with its discovery obligations while protecting
24 this sensitive information from unauthorized dissemination, and
25 (b) provide the defense with sufficient information to adequately
26 represent defendant.

27 Definitions

28 6. The parties agree to the following definitions:

1 a. "CW Materials" includes any information relating to a
2 confidential informant's or cooperating witness's prior history of
3 cooperation with law enforcement, prior criminal history,
4 statements, or any other information that could be used to identify
5 a confidential informant or cooperating witness, such as a name,
6 image, address, date of birth, or unique personal identification
7 number, such as a Social Security number, driver's license number,
8 account number, or telephone number.

9 b. "PII Materials" includes any information that can be
10 used to identify a person, including a name, address, date of birth,
11 Social Security number, driver's license number, telephone number,
12 account number, email address, or personal identification number.

13 c. "Medical Materials" includes any individually
14 identifiable health information that is connected to a patient's
15 name, address, or other identifying number, such as a Social
16 Security number or Medicare/Medi-Cal number.

17 d. "Confidential Information" refers to any document or
18 information containing CW Materials, PII Materials, or Medical
19 Materials that the government produces to the defense pursuant to
20 this Protective Order and any copies thereof.

21 e. "Defense Team" includes (1) defendant's counsel of
22 record ("defense counsel"); (2) other attorneys at defense counsel's
23 law firm who may be consulted regarding case strategy in this case;
24 (3) defense investigators who are assisting defense counsel with
25 this case; (4) retained experts or potential experts; and
26 (5) paralegals, legal assistants, and other support staff to defense
27 counsel who are providing assistance on this case. The Defense Team
28

1 does not include defendant, defendant's family members, or any other
2 associates of defendant.

3 Terms of the Protective Order

4 7. The parties jointly request the Court enter the Protective
5 Order, which will permit the government to produce Confidential
6 Information in a manner that preserves the privacy and security of
7 third parties. The parties agree that the following conditions in
8 the Protective Order will serve these interests:

9 a. The government is authorized to provide defense
10 counsel with Confidential Information marked with the following
11 legend: "CONFIDENTIAL INFORMATION -- CONTENTS SUBJECT TO PROTECTIVE
12 ORDER." The government may put that legend on the digital medium
13 (such as DVD or hard drive) or simply label a digital folder on the
14 digital medium to cover the content of that digital folder. The
15 government may also redact any PII contained in the production of
16 Confidential Information.

17 b. If defendant objects to a designation that material
18 contains Confidential Information, the parties shall meet and
19 confer. If the parties cannot reach an agreement regarding
20 defendant's objection, defendant may apply to the Court to have the
21 designation removed.

22 c. Defendant and the Defense Team agree to use the
23 Confidential Information solely to prepare for any pretrial motions,
24 plea negotiations, trial, and sentencing hearing in this case, as
25 well as any appellate and post-conviction proceedings related to
26 this case.

1 d. The Defense Team shall not permit anyone other than
2 the Defense Team to have possession of Confidential Information,
3 including defendant, while outside the presence of the Defense Team.

4 e. Notwithstanding the paragraph above, defendant may
5 see and review CW Materials only in the presence of defense counsel,
6 and defense counsel shall ensure that defendant is never left alone
7 with any CW Materials. At the conclusion of any meeting with
8 defendant at which defendant is permitted to view CW Materials,
9 defendant must return any CW Materials to defense counsel, who shall
10 take all such materials with counsel. Defendant may not take any CW
11 Materials out of the room in which defendant is meeting with defense
12 counsel. At no time, under no circumstance, will any Confidential
13 Information be left in the possession, custody, or control of
14 defendant, regardless of defendant's custody status.

15 f. Defendant may review PII Materials and Medical
16 Materials only in the presence of a member of the Defense Team, who
17 shall ensure that defendant is never left alone with any PII
18 Materials or Medical Materials. At the conclusion of any meeting
19 with defendant at which defendant is permitted to view PII Materials
20 or Medical Materials, defendant must return any PII Materials or
21 Medical Materials to the Defense Team, and the member of the Defense
22 Team present shall take all such materials with him or her.
23 Defendant may not take any PII Materials or Medical Materials out of
24 the room in which defendant is meeting with the Defense Team.

25 g. Defendant may see and review Confidential Information
26 as permitted by this Protective Order, but defendant may not copy,
27 keep, maintain, or otherwise possess any Confidential Information in
28 this case at any time. Defendant also may not write down or

1 memorialize any data or information contained in the Confidential
2 Information.

3 h. The Defense Team may review Confidential Information
4 with a witness or potential witness in this case, including
5 defendant. Defense counsel must be present whenever any CW
6 Materials are being shown to a witness or potential witness. If
7 defense counsel wishes to enable a witness or potential witness to
8 review CW Materials in the presence of any person on the Defense
9 Team other than defense counsel, defense counsel shall maintain a
10 copy of the protective order stipulation that has been signed by
11 that person (the "designated person"). Prior to the designated
12 person reviewing any CW Materials with a witness or potential
13 witness, the designated person shall be licensed as a private
14 investigator with the California Bureau of Security and
15 Investigative Services. A member of the Defense Team must be
16 present if PII Materials or Medical Materials are being shown to a
17 witness or potential witness. Before being shown any portion of
18 Confidential Information, however, any witness or potential witness
19 must be informed of, and agree in writing to be bound by, the
20 requirements of the Protective Order. No member of the Defense Team
21 shall permit a witness or potential witness to retain Confidential
22 Information or any notes generated from Confidential Information.

23 i. The Defense Team shall maintain Confidential
24 Information safely and securely, and shall exercise reasonable care
25 in ensuring the confidentiality of those materials by (1) not
26 permitting anyone other than members of the Defense Team, defendant,
27 witnesses, and potential witnesses, as restricted above, to see
28 Confidential Information; (2) not divulging to anyone other than

1 members of the Defense Team, defendant, witnesses, and potential
2 witnesses, the contents of Confidential Information; and (3) not
3 permitting Confidential Information to be outside the Defense Team's
4 offices, homes, vehicles, or personal presence. CW Materials shall
5 not be left unattended in any vehicle.

6 j. To the extent that defendant, the Defense Team,
7 witnesses, or potential witnesses create notes that contain, in
8 whole or in part, Confidential Information, or to the extent that
9 copies are made for authorized use by members of the Defense Team,
10 such notes, copies, or reproductions become Confidential Information
11 subject to the Protective Order and must be handled in accordance
12 with the terms of the Protective Order.

13 k. The Defense Team shall use Confidential Information
14 only for the litigation of this matter and for no other purpose.
15 Litigation of this matter includes any appeal filed by defendant and
16 any motion filed by defendant pursuant to 28 U.S.C. § 2255. In the
17 event that a party needs to file Confidential Information with the
18 Court or divulge the contents of Confidential Information in court
19 filings, the filing should be made under seal. If the Court rejects
20 the request to file such information under seal, the party seeking
21 to file such information publicly shall provide advance written
22 notice to the other party to afford such party an opportunity to
23 object or otherwise respond to such intention. If the other party
24 does not object to the proposed filing, the party seeking to file
25 such information shall redact any CW Materials, PII Materials, or
26 Medical Materials and make all reasonable attempts to limit the
27 divulging of CW Materials, PII Materials, or Medical Materials.
28

1 l. The parties agree that any Confidential Information
2 inadvertently produced in the course of discovery prior to entry of
3 the Protective Order shall be subject to the terms of the Protective
4 Order. If Confidential Information was inadvertently produced prior
5 to entry of the Protective Order without being marked "CONFIDENTIAL
6 INFORMATION -- CONTENTS SUBJECT TO PROTECTIVE ORDER," the government
7 shall reproduce the material with the correct designation and notify
8 defense counsel of the error. The Defense Team shall take immediate
9 steps to destroy the unmarked material, including any copies.

10 m. The parties agree that if any Confidential
11 Information contains both CW Materials and another category of
12 Confidential Information, the information shall be handled in
13 accordance with the CW Materials provisions of the Protective Order.

14 n. Confidential Information shall not be used by the
15 defendant or Defense Team, in any way, in any other matter, absent
16 an order by this Court. All materials designated subject to the
17 Protective Order maintained in the Defense Team's files shall remain
18 subject to the Protective Order unless and until such order is
19 modified by this Court. Within 30 days of the conclusion of
20 appellate and post-conviction proceedings, defense counsel shall
21 return CW Materials to the government or certify that such materials
22 have been destroyed. Within 30 days of the conclusion of appellate
23 and post-conviction proceedings, defense counsel shall return all
24 PII Materials or Medical Materials, certify that such materials have
25 been destroyed, or certify that such materials are being kept
26 pursuant to the California Business and Professions Code and the
27 California Rules of Professional Conduct.

1 o. In the event that there is a substitution of counsel
2 prior to when such documents must be returned, new defense counsel
3 must be informed of, and agree in writing to be bound by, the
4 requirements of the Protective Order before the undersigned defense
5 counsel transfers any Confidential Information to the new defense
6 counsel. New defense counsel's written agreement to be bound by the
7 terms of the Protective Order must be returned to the Assistant U.S.
8 Attorney assigned to the case. New defense counsel then will become
9 the Defense Team's custodian of materials designated subject to the
10 Protective Order and shall then become responsible, upon the
11 conclusion of appellate and post-conviction proceedings, for
12 (1) returning to the government, certifying the destruction of, or
13 retaining pursuant to the California Business and Professions Code
14 and the California Rules of Professional Conduct all PII Materials
15 or Medical Materials; and (2) returning to the government or
16 certifying the destruction of all CW Materials.

17 p. Defense counsel agrees to advise defendant and all
18 members of the Defense Team of their obligations under the
19 Protective Order and ensure their agreement to follow the Protective
20 Order, prior to providing defendant and members of the Defense Team
21 with access to any materials subject to the Protective Order.

22 q. Defense Counsel has conferred with defendant
23 regarding this stipulation and the proposed order thereon, and
24 defendant agrees to the terms of the proposed order.
25
26
27
28

